IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 39 OF 2001.

Shri Laxmikant D. Naik
Karmali, having office
near St. Joaquim Chapel,
Borda, P.O. Fatorda.
Margao. ... Appellant.

Versus

1. Shri Santosh V. Naik,
   Cindio Apartments,
   P.O. Quepem, Goa.
2. State. ... Respondents.

Mr. P.A. Kholkar, Advocate for the Appellant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent No. 1.

Coram: P.V. HARDAS, J.

Date: 21st February 2003.

ORAL JUDGMENT.

This is an appeal at the behest of the complainant, who is aggrieved by the Judgment of acquittal, passed by the learned Judicial Magistrate, First Class, Margao, dated 28th February 2001, in Criminal Case No. 130/N/99/E.

2. The appellant/complainant had filed the aforesaid case on account of the bouncing of cheque said to be issued by the accused for an amount of Rs. 60,000/-.

3. I need not dilate on the facts of the present case as Mr. Kholkar, the learned counsel appearing on

behalf of the appellant/complainant, has taken me through the Judgment of the learned trial Court and has made a grievance, justifiably so, that the learned trial Court has not taken into consideration whether a presumption under Section 139 of the Negotiable Instruments Act was available to the complainant, on the complainant satisfactorily proving the bouncing of the cheque. Undisputedly, as rightly pointed out by Mr. Kholkar, the learned counsel appearing on behalf of the appellant/complainant, the learned trial Court has not appreciated the evidence at all. The learned trial Court has also not taken into consideration whether the cross-examination of the complainant and the other witnesses amounted to rebuttal of the presumption under Section 139 of the Negotiable Instruments Act. The Judgment of the learned trial Court proceeded on the basis of self-drawn presumptions, which are not germane to the facts of the Criminal Case.

4. It is an undisputed fact that the appellant/complainant has also filed two other criminal cases against the present respondent no. 1/accused, which are pending before the Judicial Magistrate, First Class, Vasco, bearing Nos. 131/N/99/E and 195/N/99/E. Undisputedly the facts in both the pending cases and the facts in the present case are so intricately intertwined that the decision in this case would affect the decision

of the cases pending trial. In view of this, both the counsel submitted that the Judgment be set aside and the case be remanded to the learned trial Court for decision afresh by affording an opportunity to the respondent no. 1/accused to lead evidence, if he so chooses. The opportunity of leading evidence would be restricted to the examination of the respondent no. 1/accused only. If he desires to examine any witnesses, he shall apply to the Court and seek necessary permission from the Court for that purpose.

5. With the aforesaid directions, this Criminal Appeal is allowed. The Judgment acquitting the respondent no. 1/accused is, hereby, quashed and set aside. The matter is remitted to the learned trial Court with a direction that the learned trial Court shall decide all the three criminal cases on merits together by different Judgments appreciating the evidence in each case independently.

(P.V. HARDAS)
JUDGE.

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